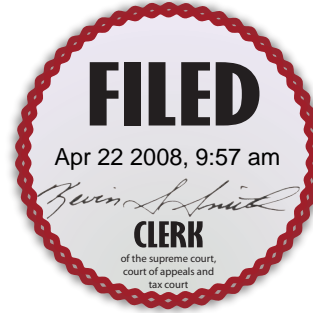


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DARBY HAHN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A01-0709-CR-407

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT I
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0704-FA-782

April 22, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Darby Hahn (Hahn), appeals his sentence for child molesting, as a Class C felony, Ind. Code § 35-42-4-3(b).

We affirm.

ISSUE

Hahn presents one issue for our review, which we restate as: Whether his eight year sentence for child molesting, as a Class C felony, is inappropriate in light of the nature of the offense and his character.

FACTS AND PROCECURAL HISTORY

On or about December 15, 2006, Hahn, who was twenty-eight years old, stuck his hand down the pants of T.B., a thirteen-year-old girl, with the intent to arouse his sexual desires. While doing so, he stuck his finger inside of T.B.'s vaginal area. On January 3, 2007, T.B. reported the incident to deputies of the Bartholomew County Sheriff's Office. She informed the officers that she had been dating Hahn, and that on the day of the incident, she was lying in his bed when he stuck his hand down her pants. She told him not to, but he did not stop.

On April 26, 2007, the State filed an Information charging Hahn with child molesting, as a Class A felony, I.C. § 35-42-4-3(a), and child molesting, as a Class C felony, I.C. § 35-42-4-3(b). On August 3, 2007, Hahn pleaded guilty to child molesting, as a Class C felony, and the State dropped its charge of child molesting, as a Class A felony. On August 28, 2007, the trial court held a sentencing hearing, at which Hahn did not testify. When

sentencing Hahn, the trial court relied upon his criminal history, which included a true finding for theft as a juvenile; multiple arrests which did not result in convictions; misdemeanor convictions for criminal conversion, illegal consumption, and battery; and felony convictions for theft, as a Class D felony, and receiving stolen property, as a Class D felony. Further, the trial court noted that Hahn was on probation in both Jennings and Bartholomew Counties at the time he molested T.B., and he had violated probation a total of six times. The trial court determined that although Hahn's act of pleading guilty would typically be a mitigating factor, it was not in this case because Hahn had received the significant benefit of the State dropping the charge of child molesting, as a Class A felony, in exchange for his plea of guilty. The trial court then sentenced Hahn to eight years in the Department of Correction, the maximum sentence for his crime authorized by statute.

Hahn now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Hahn argues that his sentence is inappropriate in light of the nature of his offense and his character. Specifically, he argues that he had a relationship with T.B. at the time of the incident. Additionally, he argues that he felt bad about touching an underage female and was truly sorry.

We have the authority to review the appropriateness of a sentence authorized by statute through Indiana Appellate Rule 7(B). That rule permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Anglemeyer v. State*, 868

N.E.2d 482, 491 (Ind. 2007), *aff'd on reh'g*. Our supreme court has encouraged us to critically investigate sentencing decisions. *See, e.g. Walker v. State*, 747 N.E.2d 536, 538 (Ind. 2001). The purpose of the express authority to review and revise sentences is to ensure that justice is done in Indiana courts and to provide unity and coherence in judicial application of the laws. *Pruitt v. State*, 834 N.E.2d 90, 121 (Ind. 2005).

As for Hahn's character, the trial court's summary of the relevant sentencing considerations are particularly persuasive. We agree that Hahn's criminal history, especially that he was on probation in two separate counties at the time of his offense, shows that he lacks the discipline to avoid breaking the law, even when given a second chance. Moreover, any argument that his character is somehow less troublesome because he was dating the victim, or that the victim somehow encouraged his conduct, falls short because of the victim's young age at the time of the offense. By allowing a situation to develop where a thirteen-year-old child thought Hahn was dating her, Hahn invited any temptation that he succumbed to.

As for the nature of the offense, any commission of child molesting is a serious offense, which cannot be taken lightly. In addition to T.B. having to deal with being a victim of Hahn's sexual offense, the Presentence Investigation Report explains that her family has had to move so that she could change schools. T.B.'s mother reported that T.B. was harassed by other girls because of accusing Hahn of child molesting. We conclude that the nature of

Hahn's offense and his character support the trial court's imposition of an eight-year sentence.

CONCLUSION

For the foregoing reasons, we conclude that the trial court's imposition of an eight-year sentence is not inappropriate when the nature of the offense and Hahn's character are considered.

Affirmed.

KIRSCH, J., and MAY, J., concur.